

**Translation**

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PATENT COOPERATION TREATY



**PCT**

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**INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY**  
(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 0000054041	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/EP2003/012277	International filing date (day/month/year) 04 November 2003 (04.11.2003)	Priority date (day/month/year) 07 November 2002 (07.11.2002)
International Patent Classification (IPC) or national classification and IPC C07D 487/04		
Applicant BASF AKTIENGESELLSCHAFT et al.		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>	
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>	

Date of submission of the demand 20 April 2004 (20.04.2004)	Date of completion of this report 24 August 2004 (24.08.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

# INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

International application No.

PCT/EP2003/012277

## Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This report is based on translations from the original language into the following language \_\_\_\_\_, which is language of a translation furnished for the purpose of:

- ☐ international search (under Rules 12.3 and 23.1(b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

☒ The international application as originally filed/furnished

☒ the description:

pages \_\_\_\_\_ 1-27 \_\_\_\_\_, as originally filed/furnished

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

☒ the claims:

pages \_\_\_\_\_ 1-9 \_\_\_\_\_, as originally filed/furnished

pages\* \_\_\_\_\_, as amended (together with any statement) under Article 19

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

☐ the drawings:

pages \_\_\_\_\_, as originally filed/furnished

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

pages\* \_\_\_\_\_ received by this Authority on \_\_\_\_\_

☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages \_\_\_\_\_

☐ the claims, Nos. \_\_\_\_\_

☐ the drawings, sheets/figs \_\_\_\_\_

☐ the sequence listing (*specify*): \_\_\_\_\_

☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages \_\_\_\_\_

☐ the claims, Nos. \_\_\_\_\_

☐ the drawings, sheets/figs \_\_\_\_\_

☐ the sequence listing (*specify*): \_\_\_\_\_

☐ any table(s) related to sequence listing (*specify*): \_\_\_\_\_

\* If item 4 applies, some or all of those sheets may be marked "superseded."

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement****1. Statement**

Novelty (N)	Claims	1 - 9	YES
	Claims		NO
Inventive step (IS)	Claims	1 - 9	YES
	Claims		NO
Industrial applicability (IA)	Claims	1 - 9	YES
	Claims		NO

**2. Citations and explanations**

Reference is made to the following documents:

D1: WO-A-02083677

D2: EP-A-0141317

**Novelty**

The subject matter of D1 is fungicides which differ from the compounds as per claim 1 in that there is a 2-chloro-6-fluorobenzene substituent in the 6 position and the substituent "X" in the 5-position is selected from cyano-, alk(en)yloxy or haloalkoxy groups (cf. page 1, formula I; page 10, line 18 - page 11, line 12).

The subject matter of D2 is fungicides which differ from the compounds of claim 1 in that the substituent in the 6-position is an (ar)alkyl group (cf. page 1, formula I; page 9, table, compound no. 9; page 10, line 34 - page 11, line 2).

In the light of this substantive matter, the novelty of claims 1, 4 and 6-9 and of dependent claims 2, 3 and 5 must be acknowledged.

**Inventive step**

D1 is considered the prior art closest to the new claims, since it is structurally closer to the compounds of claim 1 (cyclical substituent in the 6-position) and solves the same problem. The differentiating feature is the special combination of a group "X" having the meaning (halo)alkyl in the 5-position with a saturated cyclical group in the 6-position.

In the absence of evidence for a technical effect connected to this feature, the objective problem solved by this feature can merely be seen as the provision of further fungicides and a method for the production of same.

Since the claimed solution to this problem, namely the above-mentioned special combination of substituents, cannot be derived from the prior art, an inventive step must be acknowledged for this solution, even in the absence of a technical effect.

**Industrial applicability**

There is no doubt as to the industrial applicability of the subject matter of the present claims.